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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

JOHNSON, BLAIR M

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,039

Applicant(s)

THOMAS ET AL.

Examiner

Blair M. Johnson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-62 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 40-62 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/17/03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

Claim Rejections - 35 USC § 112

Claims 49,56,57 and 59-62 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The structure or means which enables the screen to be replaced in the tracks are not adequately disclosed. Also, the L-shaped connection member has not been adequately disclosed.

Claims 4-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 40, "the end", line 7, is ambiguous since a "free end" has been previously recited and the fabric has two ends.

Specification

The disclosure is objected to because of the following informalities: On page 9, line 19, the reference to 5C as having certain elements such as 56-1' is not accurate. The reference numeral 22 has been used with more than one term.

Appropriate correction is required.

Drawings

The drawings are objected to because in Fig. 11A, it appears that element 22 has been labeled as "22-1" which is disclosed as being the screen material. Corrected

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drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 40-42,44,59 and 62 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Kavchar.

The Kavchar device reads on a door, as is presently claimed.

The frame, as best seen in Figs. 3 and 4, has four sides which define the header, sill and jambs. See first, 80, and second, 64, slots, fabric module 44, insert 32, and screen fabric 58, having a free end coupled via connection elements 54,56,148,152, etc., to the insert, spring 166a. See resilient engagement member 152 in the form of a rubber rod, column 13, line 48.

Element 124 of free end connection 56 is clearly slidably engagable with channel 120 of insert portion 54 and is removed therefrom after manipulating the latch 62.

A portion of the connection element 56 is L-shaped. Claim 49 is met as best understood in view of the 112(1) rejection above. Mating coupling element 54 slidably engages the L-shaped element. It

Claim 59 recites a method step when it uses the word "prior". This product by process limitation does not limit the claim other to recite that the prior art must be capable of achieving this method step, which is clearly the case with Kavchar.

Regarding claim 62, Kavchar is capable of achieving the track reengagement as best understood in light of the 112(1) rejection above.

Claims 40,41,43,45-48,50,51-55,59 and 60 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Johnson.

See header, jambs and sill 12, first, between elements 102, and second, 112,114, slots, fabric module 34, fabric 36, and connection element 40 which engages the insert at coupling element 44. Regarding claim 51, friction is used to hold the inserts

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in place, column 2, line 31. Claims 52 and 53 recite features of elements not chosen in claim 51. The door is made of aluminum, column 2, line 9, which meets claim 54. The material of claim 55 was not chosen from claim 54.

Element 42 "snugly engages" element 44, which clearly involves a sliding movement to some extent. A portion of element 40 is L-shaped, as best understood. Likewise, the screen is capable of being reengaged with the track, as best understood in view of the 112(1) rejection.

The term "prior" in claim 59 is a method step and is given no weight. This product by process limitation does not limit the claim other to recite that the prior art must be capable of achieving this method step, which is clearly the case with Johnson.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43,47,48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson.

It would have been obvious to modify the "snugly" fitting feature so as to be manipulated without tools to render the screen easily disengaged.

It would have been obvious to make the screen material of Johnson of such material, or the seals 115,108, etc., of such a strength that the screen will be disengaged from the tracks instead of being damaged.

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The use of plastic for windows, screen elements, etc., is well known in the art and using such for the Johnson elements would have been obvious so as to render the device less expensive and corrosion resistant.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 40 and 49 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6618998. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 14 has additional limitations in addition to all the limitations of claims 40 and 49.


Claim 59 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 14 of U.S. Patent No. 6618998 in view of Kavchar. The use of a spring roller mounted screen is well known as illustrated by Kavchar. It would have been obvious to modify the screen of claim 59 to be roller mounted to provide automatic retraction of the screen.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blair M. Johnson whose telephone number is (703) 308-0526. The examiner can normally be reached on Mon.-Fri., 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Blair M. Johnson
Primary Examiner
Art Unit 3634

BMJ
9/6/04